

REMARKS

Applicants' claims are amended to clarify the patentable subject matter. The amendments in claim 1 are supported by previous claim 2, the flow diagram of Figure 6A and the corresponding description on page 6, lines 16-28. Similar amendments have been carried out in the other independent claims, as well. No new matter has been added.

According to the Final Office Action, claims 1-4, 6-10, 12-16 and 18-21 are rejected under 35 USC 103(a) as being unpatentable over Diener (US Patent No. 7,269,151) in view of Regulinski (US Published Application No. 2002/0146979).

In response, the rejections are respectfully traversed as lacking sufficient factual support and failing to establish a prima facie case of obviousness in accordance with the established cases and statutory law.

Either Diener or Regulinski fails to disclose, among other things, Applicant's feature of "determining whether signals are present in said identified frequency range, wherein if the signals are present, then analyzing said signals and determining the characteristics of said signals; if the signals are not present in said identified frequency range, then transmitting desired signals using fixed operating conditions; wherein if the signals are present in said identified frequency range, then determining a set of altered transmission characteristics based on the determined signal characteristics to allow for transmission of a desired signal in said identified frequency range, wherein said altered transmission characteristics avoid interference with signals expected in said frequency range" as recited in claim 1.

There is no determination in either Diener or Regulinski whether frequency signals are present in that frequency range. In the present invention the transmission characteristics are altered based on the determined signal characteristics.

Thus, the claims, as amended, are novel over the teachings of Diener or Regulinski, either separately or in combination. The technical effect of these differentiating features is to allow obtaining a two-level spectrum allocation method. In other words, at first level an available spectrum opportunity is determined and then at second level, it is determined whether signals are present in that frequency range and analyzing these signals for altering transmission characteristics. Thus, the objective technical problem solved could be formulated as being how to obtain a two-level spectrum allocation method. This issue is not addressed in Diener or Regulinski, either separately or in combination.

Consequently, even if the two references were combined (Applicants' representative does not concede that Diener and Regulinski are combinable, but simply states the above for the sake of argument), the combination would still fail to teach or suggest all the claim limitations of Applicants' invention.

At least for the above reasons, Applicant submits that the rejection of claim 1 has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

Claims 8 and 15 contain features similar to those in claim 1. Hence, the analysis of those independent claims is similar to claim 1, as presented hereinabove. To avoid repetition, claims 8 and 15 will not be discussed in detail with the understanding that they are patentable at least for the same reasons as claim 1.

Claims 3, 4, 6, 7, 10, 10-14 and 18-21 depend from independent claims, which have been shown to be allowable over the prior art reference. Accordingly, claims 3, 4, 6, 7, 10, 10-14 and 18-21 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein.

An earnest effort has been made to be fully responsive to the examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

/Brian S. Myers/

Brian S. Myers

Registration No.: 46,947